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trustee in a deed of trust who took the acknowledgment of the grantor did not know at the time that he was a party to the deed, and refused to accept the trust as soon as he discovered that he was a trustee, is wholly immaterial. Recordation upon such acknowledgment is not constructive notice of the deed.

OGLESBY'S EX'X V. HUGHES AND OTHERS.—Decided at Wytheville, June 23, 1898.—*Harrison, J* :

1. MINING LEASE—*Agreement of parties as to construction of lease—How treated by courts.* In a suit to rescind a mining lease where the bill charges, and the answer admits, that the lease was terminable at the will and pleasure of either party, it will be so treated, and the lease held to have been terminated by the institution of the suit.

2. MINING LEASE—*Terminable at will—Rights and liabilities of lessor and lessee.* A mining lease for a period of ten years, terminable at the will of either party during that term, which provides that the lessee shall remove not less than an average of 12,000 tons of ore per year, does not bind the lessee to remove that quantity each year, but only an average of that quantity during the ten years, and if the lease is terminated by the lessor without fault of the lessee at an early period of the lease, the lessee is only bound to pay the price agreed for the ore actually mined; and if he has made advances to the lessor on account of royalties contemplated under the lease, he is entitled to recover of the lessor the amount so advanced, less the royalties due by him for ore actually mined.

W. S. McCLANAHAN V. IVANHOE LAND & IMP. CO.; J. L. TREDWAY V. SAME; J. B. WAUGH V. SAME; SNEAD'S ADM'R V. SAME; MRS. S. U. SNEAD V. SAME; SNEAD & SNEAD V. SAME.—Decided at Wytheville June 23, 1898.—*Cardwell, J* :

1. STOCK SUBSCRIPTIONS—*Fraud in procurement—Rescission—Payment of premium to a third party—Case in judgment.* A person who has been induced to become a subscriber to the stock of a company through the fraud of the company and its misrepresentation of material facts, may, on discovery of the fraud and misrepresentation, have his contract of subscription rescinded, and recover back the purchase money paid with interest thereon, although he may have paid a third party a premium or bonus to get the stock. In the case in judgment, the contract of subscription was made by the appellant with the company, it was obtained by misrepresentations of material facts made directly to him, the certificates were issued directly to him, the cash payment and the subsequent assessments were paid by him, and though he may have paid a third party a premium or bonus to get the stock, there is not an intimation, either in the certificate or the record, that the stock had ever been subscribed to by any other person and transferred by such other person on the books of the company to the appellant. The just and fair inference, therefore, is that such third person to whom he may have paid a premium or bonus stood to the company in the relation of agent, and the contract will be rescinded and a decree pronounced against the company for the purchase price paid with interest from the date of payment.